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In re Application of
Krieg
Application No. 10/619,279
Filed: July 14, 2003
Attorney Docket No.1039.70077US00

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: **DECISION DISMISS PETITION**
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This decision is in response to Applicant's "APPLICATION FOR PATENT TERM ADJUSTMENT" TIMELY filed on February 26, 2007 requesting that the Office adjust the PTA determination at the time of the mailing of the notice of issuance from a determination of 525 days to a determination of 580.

Applicant's application for PTA is **DISMISSED**.

Applicant asserts that the Office erred in assessing a fifty-five day reduction under 37 CFR 1.704(c)(8) for the submission of an amendment after the response to the election/restriction requirement but prior to the Office submitting an addition action under 35 U.S.C. 132. Applicants assert that they filed a preliminary amendment and should not be considered a supplemental response.

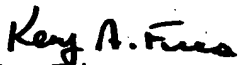
A review of the file reflects that applicants' arguments are not persuasive. The Office notes that the mailing of an election or restriction requirement is an notification within the meaning of 35 U.S.C. 132 and therefore the requirement of 35 U.S.C. 1.702(a)(1) is met. See MPEP 2731 (2700-13). Accordingly, the fourteen-month clock has stopped. Applicants have three months to respond the election or restriction requirement without any PTA reduction regardless of the fact that the shortened statutory period (ssp) has been set at one month. See 37 CFR 1.704(b). However, applicants do not have three months to have as many responses or other papers such as IDS or amendments considered without PTA reduction. An amendment or IDS submitted after reply to the election/restriction requirement but prior to the Office submitting an Office action is considered a supplemental paper for PTA purposes pursuant to 37 CFR 1.704(c)(8).¹ Accordingly, the fifty-five (55) day reduction is proper. Overall, the amount of PTA at the time of the mailing of the notice of allowance is 525 days. Office delays are 568 days under 35 U.S.C. 1.702(a)(1) and 12 days under 37 CFR 1.702(a)(2). Applicant delay is 55 days under 37 CFR 1.704(c)(8).

¹The delay beginning on the day after the initial response is filed and ending on the date of the supplemental paper. The delay began on May 10, 2006 and ended on July 3, 2006.

After the mailing of this decision, the Office will forward this application to the Office of Patent Publication for a prompt issuance of the patent. Any delays pursuant to 37 CFR 1.702(a)(4) and 37 CFR 1.702(b) will be added to the patent term adjustment at the time of the issuance of the patent and will be reflected in the issue notification letter that is mailed to applicant approximately three weeks prior to the issuance of the patent. Applicants disputing the determinations under 37 CFR 1.702(a)(4) or 37 CFR 1.704(b) will have two months after the issuance of the patent to contest such determination. See 37 CFR 1.705(d).

The Office has assessed the \$200.00 fee. No additional fees are required in this deciding this application.

Any questions concerning this decision should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy, at 571-272-7757.


Kery Fries
Senior Legal
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